



July 1, 2009

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### **Comments on the Revised Open Access Transmission Service Tariff**

The Mid-West Electric Consumers Association ("Mid-West") appreciates the opportunity to comment on the Western Area Power Administration's ("Western") revised Open Access Transmission Service Tariff as noticed in the May 18, 2009 Federal Register (pp.23185-6).

Mid-West generally agrees with Western's proposed changes. Western has a delicate line to walk. On the one hand, Western seeks to keep apace of changes in the electric utility industry being mandated by Congress. Western is not a public utility under §205 of the Federal Power Act, and thus not subject to Federal Energy Regulatory Commission (FERC) jurisdiction. To ensure appropriate participation by Western in the restructuring industry, the Department of Energy granted Western authority to participate "in a manner that is comparable to the services, tariffs, and other measures required of transmission owners and operators regulated under the Commission's final rule on open access and non-discriminatory transmission services *to the extent not otherwise prohibited by law* [emphasis added]" (Power Marketing Administration Open Access Transmission Policy, October 4, 1995).

So, on the other hand, Western is bound by its long-standing statutory responsibilities. FERC's administrative actions do not trump Western's statutory responsibilities. Western must remain mindful of those responsibilities.

Western was doing just that when it rejected FERC's proposed tariff modification that would have permitted resale of transmission at market prices (§23.1). One of the foundations of the federal power program is cost-based rates. Cost-based rates are integral to the purpose and role of federal Power Marketing Administrations. Cost-based rates provide public resources to non-profit public bodies (municipal electric utilities, rural electric cooperatives, federal and state agencies, and Native American tribes), which provide these benefits to the public without passing through a profit toll gate. These "preference customers" cannot mark up their federal

power purchases to derive profit. The same principle applies to transmission. In addition to providing public benefits to the public, Federal power continues to provide a valuable yard stick for measuring performance in the sectors of the electric utility industry.

Mid-West strongly agrees with Western's proposal to not adopt FERC's recommended changes to §23.1, Procedures for assignment or Transfer of Service, which, if adopted, would permit resale of at-cost federal transmission at market rates, a clear "crossing of the line" prohibited by Western's statutory responsibilities and obligations.

Mid-West appreciates and supports Western's decision not to adopt Order 890 financial penalties associated with meeting timelines for transmission studies. However, we are confused as to Western's full intent and proposal under these sections (19.10(i) and 19.10(ii)). At a June 2<sup>nd</sup> meeting on Western's proposed Tariff modifications, Western's presentation stated:

- "Western is not required to pay these penalties and the relevant Tariff provisions were removed
- Language was kept regarding the tracking and posting of study performance metrics"

Yet the language in Western's proposed revisions appears to remove those reporting requirements. Mid-West asks for a clarification of Western's intent on these sections.

Mid-West agrees with the Western's proposal not to adopt financial penalties associated with relevant transmission studies, but does not agree with the elimination of reporting requirements on the status of transmission studies.

Mid-West appreciates the opportunity to comment on Western's proposed revisions to its Open Access Transmission Tariff (OATT).

Sincerely,



Thomas P. Graves  
Executive Director